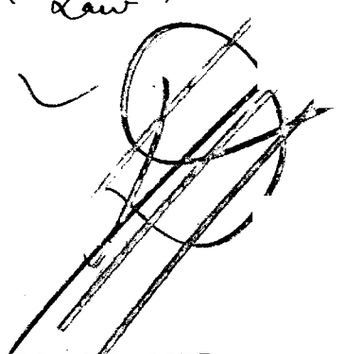
App. F. IX-4

1934.
(Law)

File No. 194-34
Serial Nos. 1-2

Previous References
J. S. 19-32-2-3

Later References.
Law Dep 19/35
94-34(3+5)



PRESERVED

GENERAL AND REVENUE SECRETARIAT.

Serial Nos. Two.

Part B for May 35

SUBJECT.

Re. Prosecution of one Sri N Bheemachar of Sri Vittalanarasimha Agency for having published proposals re. Visvesvaraya Bond Scheme of Travancore.
Alliance Bank Ltd

2). To 1) D.J.M. Bldrs
2) Regr. & S. Coop.
3) D.J. Police.

WD 01965—GPB—15,000—7-7-34

No. P 61, 85—4 dy 28.5.35

J.S File No. 30- of 193 4-5-

Serial No.	
1	Letter no C 502/34 35 & from the Registrar of Join Companies in Mysore Ban forwards for reference and return memo no J.C 4501 & 3-3-35 from the District Superintendent of Police forw ing the report of the Public prosecutor, Bangalore, with Encls and requests orders of Go ment to prosecute one N. Shiv Char under section 196 of C. P) submitted for orders with t previous file on the subj This may perhaps be ref to Law secretariat for opini in the matter. The case was po 12 NB for the 13th instant ~~Sarada~~ 8.3.35 Probable an a government have been obtained

efre the City magistrate and the accused has ~~[illegible]~~ moved a preliminary objn regarding the juris of the magistrate to take cognisance I am sure this objn is quite valid under the law & in all probabilit will be upheld by the Court.

3) In my note of 22.5.33 in D.S file 19.32, I noted that further action re: Sanction has to be taken after proposals in the matter are received from the Dt wise. It would have been better if this had been communicated to the Registrar. But any way, the Police ought to have moved for sanction of Govt before taking the case to the Court. It is really strange that this important step has not been taken by the prosecution. The best thing to do is therefore for the prosecution to withdraw the complaint & file a fresh complaint after ~~sanction~~ obtaining sanction.

4) Please ~~prepare~~ save the draft D.O letter to the D.S.P ~~[illegible]~~ further e.o. is to what happened to this case on the 7th & requesting him to see me ~~[illegible]~~ immediately.

To,

Mr D.S.P. Bhr

D.O.No. 4960 dt 9.9.35 enquiring
when response to the Case on 7th

5) I had discussed this case with the D.S.P Mr Ramajoga high yesterday. He said the Police misconception the Dev Secy's letter of 20th June 1933 as sufficient sanction under Sec 196 CrPC This was a mistake. In the circumstances the only course, he agreed, is to withdraw the case under Sec 494 CrPC with the consent of the court & then to file a fresh case after obtaining sanction of Govt through the D'ngle, Bangalore. He has promised to take necessary action in the matter

6) The want of sanction in the present case now instituted is fatal & cannot be cured by giving sanction now as proposed by the Registr

8) Draft reply to Regr - withdrawal
sd
14/3

Sub: accordingly
may send from the Dep Br
↓
not necessary —

9)

10) Issue today
as revised
sd
14/3/35

The Regr of Jt. St. Companies -
no. P. 5097 dt 16.3.35 informing that
the present Case instituted has to be
withdrawn and fresh Complaint filed
after obtaining proper sanction of
Govt under the law -

13) Sri Ranajeetha Singh (DSP) Saw me
He says that the case being a summons
the withdrawal is to be under sec 2
Cr. P. Code, ~~and~~ which means the Court
to pass an order of acquittal - He there
~~fore~~ doubts whether he can launch a fresh tri
after obtaining sanction under sec 196 C

14) Sec 403 Cr.P.C bars a fresh trial
if the accused has already been tried by
Court of Competent jurisdiction and either
convicted or acquitted therein. I do not thi
in the present cases sec 403 can
said to apply ~~or~~ In the absence of sanction unde
sec 196 the Court is not rightly seized
of the case and therefore there is no tria
& no Court of Competent jurisdiction in
the present instance. If therefore the ca
is allowed to be withdrawn not perh
under sec 248 but under sec 249, th
is no acquittal to bar a fresh trial -
In 60 Cal 149 it has been held that
where there is no proper complaint b
a magistrate who consequently is not
a position to take cognisance of the ca
and therefore lodges the same giving an
opportunity to file a fresh complain
in proper form, there is no acquittal

within the meaning of sec 403 Cr.P.Code. In 31 All 317 it has been held that an acquittal order passed by a Magistrate having no jurisdiction to take cognisance of the case for want of a proper complaint is no bar to a fresh ~~trial~~ trial. The same view is held in 24 Mad 337, 22 Bom 711, 36 Mad 708 and 53 Bom 69. See also 5 Patna 452 and 97 Indian Cases 417; 1948 I.C. 437

(5) In these circumstances, I think the Magistrate may should be moved to stop further proceedings in the case now pending before him under sec 249 Cr.P.C ~~In this case~~ and to order the release of the accused. ~~Complainant's application~~ A proper complaint may afterwards be filed after obtaining sanction of Govt under sec 196 Cr.P.C

(6) Forwarded with compliments to the Govt Advocate for favour of advice whether the course suggested above may be adopted.

B Yegnadev

27.3.35

17) Returned with Compliments.
The procedure suggested above (marked A)
may be adopted

V. D. Aggarwal 24/4

I. G. P.

18) Draft D.O. letter to
D.S.P. Copy to Supdt.

24/4/85

The D.M. Bilaspur

No. J1. 1541/34-35 dt 15.5.35 stating that
fresh proceedings u/s Cr. mag.te has passed order
staying further proceedings u/s Cr. 499/34
and releasing the accused Bheemacharya,
and requesting formal sanction of
Govt to prosecute N. Bheemacher under
sec 294 A I.P.C.

Ref[ce] Paras 5-17 Supra.

with a dft G.O. Sanctioning for orders.

May be approved →

(Gen Secy) 20/5

(Hon Secy) 21/5

To,

The D.M. Bijnor

Regd: Jr. St. C/No

D.S.P.

S.O. no. P. 6485-87 Law 1934-35-2 dt. 20-12-35

according sanction to prosecute me

Bheemachar

Office of the Registrar of Joint Stock
Companies in Mysore,
Dated, Bangalore the 4th March 1935.

From

D.Srinivasa Iyengar, Esq., B.A.,
Registrar of Joint Stock Companies
in Mysore, Bangalore.

To

M.Venkatanarasappa, Esq., B.A.,
Secretary to the Government of
His Highness the Maharaja of Mysore,
Development Department, Bangalore.

Sir,

With reference to the correspondence ending with your letter No. D.6528/35-19-32 dated 20th June 1933 regarding the question of lottery of the Travancore Alliance Bank Ltd., I have the honour to forward herewith for reference and kind return memo No. P.C. 450/32-35 dated the 3rd March 1935 received from the District Superintendent of Police, Bangalore, forwarding the report of the Prosecuting Inspector, Bangalore, together with its enclosures and to request that orders of Government may kindly be obtained, if there is no objection, under -- section 196 of the Criminal Procedure Code to prosecute Mr.N.Bhimachar of Sri Vittal Narasimha Agency, Sole Agents for ~~the~~ Mysore and Coorg for the Travancore Alliance Bank Ltd., and communicated to this office at a very early date.

I have the honour to be,
Sir,
Your most obedient servant,

D. Srinivasa Iyengar
Registrar of Joint Stock
Companies in Mysore.

Dated

Despatched

Received

General No.

'No.

Enclosure No.

4940 GENERAL AND REVENUE SECRETARIAT,

Dated, Bangalore 9th March 1935.

ear Mr.Ranajodha Singh,

I find that a case has been launched against one .Bhimachar in the City Magistrate's Court for an offence under Section 294 A, Indian Penal Code without obtaining previous sanction of Government under Section 196 Criminal Procedure Code. The case it seems was for hearing on 7th. Please let me know immediately what happened to the case on the 7th and kindly make it convenient to see me as early as possible regarding this.

Yours sincerely,

MM

C.M.H.Ranajodha Singh Esq., B.A.,
District Superintendent of Police,
Bangalore City.

Dear Mr. Ramajoshaiah,

I find that a case has been launched against one N. Shivaraka in the city magistrate court for an offence under sec 294 A I.P.C without obtaining previous sanction of court under sec 196 Cr.P.Code. The case it seems was for hearing on 7th. Please let me know immediately what happens to the case on the 7th and kindly make it convenient to see me as early as possible regarding this.

Yours sincerely

MP.

9/3

GOVERNMENT OF HIS HIGHNESS THE MAHARAJA OF MYSORE

General and Revenue Secretariat

No. P 3097

Dated, Bangalore, 14th March *193*5.

From

~~M. Venkatanarappa, Esquire, B.A.,~~
The Secretary to the Government of His Highness the Maharaja of Mysore,
General ~~*Development*~~ *Department.*

To

D. Srinivasaiengar, Esquire, B.A.,
Registrar of Joint Stock Companies in Mysore,
Bangalore.

Sir,

With reference to your letter No. C. 582/34-35 dated the 4th March 1935 soliciting sanction of Government to prosecute Mr. N. Bhimachar of Sri Vittal Narasimha Agency for the Travancore Alliance Bank, Limited, under Section 294A, Indian Penal Code, I am directed to state that the action of the Police in having launched the case without obtaining proper sanction of Government under Section 196, Criminal Procedure Code, is highly irregular. This initial mistake cannot now be rectified by issue of sanction now as proposed by you. The only course left open is therefore to withdraw the present case with permission of the Court and to institute if necessary a fresh complaint after obtaining proper sanction of Government under the law. Further action in this matter has to be taken by the District Magistrate.

The enclosures to your letter are herewith returned.

I have the honor to be,
Sir,
Your most obedient servant,

(sd) H.V. Ramaswami
~~Sd/- M. Venkatanarappa~~,

Secretary to Government,
Development Department

Copy of the foregoing is forwarded to the District Magistrate, Bangalore District, for information and necessary action.

By order,

Secretary to Government,
Development Department

Appendix F. G.–1]

SUBJECT.....

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Diary No. of letter replied to.....

General and Revenue Secretariat.

( )

the 193

Date of issue 14/3/35

Signed by

Section.

File No.

Serial No.

No. P 3097/Ser 5

To

The Registrar of Jts.

Sir,

With reference to your letter no. C-582/Jurs dt 4.3.35 Soliciting sanction of Govt to prosecute Sri. N. Bhaskara Iyer Srinivasa Agency for the Travancore Alliance Bank Ltd. under sec 294 I.P.C. I am directed to state action of the Police in having launched the case ~~without~~ without obtaining proper sanction of Govt under sec 196 Cr.P.C ~~Cannot stand for want of your~~ highly irregular ~~sanction under section 196 Cr.P.~~ This initial mistake cannot now ~~be D.S.P. Alwaye City has been~~

instructed to withdraw the same under sec 494 Cr.P.C. with the Consent of the Court, and then to file a fresh Case after obtaining sanction of Govt thro' the Magte Mhow

He encloses to you the Warrant returned

I have the pleasure to be, Sir,
Your most obedient servant
14/3
TSD
14/3

to the D.M. Mhow

with and necessary advice.

be rectified by issue of sanction now as proposed by you - The only course left open therefore is to withdraw the case with permission of the Court and to institute if necessary a fresh complaint after obtaining proper sanction of Govt under the law - Further action in this matter to be taken accordingly -

D. O. No. 93523 GENERAL AND REVENUE SECRETARIAT,

Dated, Bangalore 3rd April 1935.

Dear Mr. Ranajodha Singh,

In connection with the talk you had with me recently regarding the withdrawal of the prosecution for an offence under Section 294 A, I.P.C. launched against one N. Bhimachar of Sri Vittala Narasimha Agency, Sole Agent for the Travancore Alliance Bank, Ltd., I am to enclose herewith a copy of my note on the point raised by you and to state that in the circumstances pointed out therein, the Magistrate may be moved to stop further proceedings in the case and now pending before him, under Section 249 Cr.P.C. and to order the release of the accused. A proper complaint may afterwards be filed after obtaining sanction of Government under Section 196 Cr.P.C.

Yours sincerely,

Memo No.

Copy of the ~~afore~~ foregoing is forwarded, with compliments, to the District Magistrate, Bangalore, in continuation of this office Memo No. P.5098 dated 14th March 1935.

By Order,

for General Secretary to Govern

Appendix F. G.–1]

SUBJECT.....

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.....y No. of letter replied to.....

General and Revenue Secretariat.

( )

the 193

of issue 3/4/35

l by Mr N.R./R

Section.

File No.

Serial No.

No. P3543/Ex 1

To

Dear Mr Ranjodha Singh,

In Connect
ion the talk you had
with me
recently re the withd.
of an offence under sec 294A IPC
of the prosecution launched at
the N. Bhimacha of Sri Volta
Steamer
Navigation Agency for the Travan
Alliance Bank Ltd, under ~~per~~
~~D.O.~~, I am to enclose herewith
my note on the point
a Copy of ~~the opinion of the Law~~
raised by you
~~Department~~ and to state that in the
Circumstances pointed out therein, the
magistrate may be moved to stop
further proceedings in the Case now

pending
before him, under sec 249 Cr. P.C.
and to order the release of the
accused. A proper Complaint
may afterwards be filed after
obtaining sanction of Govt. under
sec 196 Cr. P.C.

Yours faithfully

3/84

To,

C. M. H. Rangathasinghe Esq
D.S.O. Bibile

1) No 73547/Enq
The D. M. Bibile
in Continuation of this Off
5095 dt 14/3/85

2) The Registrar of Supr.
in Continuation of this
Office letter no. P. 5097 dt

In all future communications please quote
No. J1.1541/34-35
Enc. 2

Tel. Address.—"DEPCOM"
Post Box No. 34.

OFFICE OF THE DISTRICT MAGISTRATE,
BANGALORE DISTRICT.

Dated, Bangalore, the 15th May, *193*5

Law 194-34.

FROM

K.V. Anantaraman, Esq., B.A.,
District Magistrate,
Bangalore District.

To

H.V.Ramaswamy, Esq., M.A., B.L.,
General *Secretary,*
to the Government of Mysore.

16 MAY 1935

SIR,

Subject:—

Adverting to correspondence ending with your Memo No.P.5544 dated 3rd April 1935, sending me a copy of Mr. Jaya Rao's D.O. letter to the City Superintendent of Police, regarding the prosecution of Mr. N. Bheemachar of Sree Vittala Narasimha Agency, for publishing proposals relating to lotterie I have the honour to forward herewith a copy of letter No.I.C.450/32 dated 4-1935 with that of the enclosure from the City Superintendent of Police in the matter and to state that the City Magistrate, Bangalore has passed an order in C.C.499/34-35 on 18-4-1935 staying further proceedings and releas the accused.

I request that formal sanction of Government may kindly be obtai under Section 196 Criminal Procedure Code to prosecute Mr. N. Bheemachar fo having committed an offence under Section 294 (A) Clause 2 of Indian Penal

Copy of letter No.I.C.450/32 dated 24-4-35 from the City Superintendent of Police, Bangalore t. the District Magistrate, Bangalore District.

With reference to your Memo No.L.J1.1329/34-35 dated the 21st March 1935 regarding the prosecution of Mr. N. Bheemachar of Sree Vittal Narasimha Agency, I have the honour to state that a prosecution report was placed before the City Magistrate under Sec.294 (A) Cl. 2 I.P.C. against the said Mr. Bheemachar, as the scheme in advertance amounted to a lottery as communicated by the Secretary to Government, Development Department to the Registrar of the Joint Stock Companies in Mysore in letter No.D.6528/J.S. 1932 dated the 20th June 1933.

During the course of trial, the counsel for the accused raised an objection that the complaint was invalid in the absence of a specific order from Government under Sec.196 Cr.P.C. to institute proceedings under Sec. 294 (a) I.P.C. against the said individual.

As there has been no proper sanctionof Government to institute the proceedings under Sec.294 Cr.P.C. to stop the further proceedings in the case with a vie to obtain formal sanctionof Government.

Thereupon the City Magistrate passed an order in C.C.499/34-35 on 18-4-35 staying further proceedings; and ordered the release of the accused (copy enclosed for p...sal).

Under these circumstances, I request that Government may be moved in the matter to accord formal sanction under Sec. 196 Cr.P.C., to prosecute Mr. N. Bheemach for having committed an offence under Sec.294 (A) Cl 2 I.P.C.

Copy of enclosure:-

IN THE COURT OF THE CITY MAGISTRATE, BANGALORE.

C.C.No.499/34-35

Date 18th April 1935

Present Mr. S. Narayana Rao, Esq., M.A., (Hons),
City Magistrate, Bangalore.

Complainant: Government versus
Accused Bheemachar
Section 294 (A) I.P.C.,

This is a case under Section 294/A/I.P.C. taken on file on the report of the B. Division Police Inspector, Ban...e City. The accused pleaded not guilty to the offence and the case was posted for evidence. His counsel appeared on the date

date of the next hearing and raised the objection that the complaint was invalid as under Section 196 Cr.P.C. the sanction of order of the Local Government was necessary to institute proceedings under Sec. 294 (A) I.P.C. Arguments of the prosecution and the defence were heard. The prosecution admit that there has been no proper sanction and an application has been filed by them that further proceedings may be stopped under Section 294 Cr.P.C. The accused's counsel objects to this on the ground that a Police Report in non-cognizable case is a complaint and therefore section 294 Cr.P.C. does not apply at all. It is clear according to both the parties that for want of proper sanction the complaint is invalid and the case can't proceed. Section 248 cannot be applied as prosecution have not chosen to withdraw the case. There is no other Section under which a summons case could be disposed off without taking evidence. Further it is seen from Woodroffe's Criminal Procedure Code (1926) page 12 that "now section 196 (b) has been amended so as to include any report whether in cognizable or in non-cognizable cases and therefore the term "Complaint" will not exclude both". If therefore the Inspector's report in this case is considered as a report and not a complaint Section 249 Cr.P.C. would ~~xxxxxx~~ be applied. In view of the above interpretation Section 249 Cr.P.C. would appear to be applicable to this case and I accordingly stop the proceedings and release the accused under that sectio

PROCEEDINGS OF THE GOVERNMENT OF HIS HIGHNESS THE MAHARAJA OF MYSORE.

R E A D:-

Correspondence ending with the letter No.J.1.1541/34-3[illegible] dated 15th May 1935 from the District Magistrate, Bangalore, soliciting in the circumstances pointed out sanction of Government to prosecute one Mr.N.Bheemachar of Sree VittalaNarasimha Agency, under section 294 A, I.P.C., for having published proposals relating to the Bonus Bond Scheme of the Travancore Alliance Bank Ltd.,.

Order No. P 6485-87 Law (94-34-2

Dated, Bangalore, 27th May 1935

Under Section 196, Criminal Procedure Code, sanction is accorded to prosecute Mr.N.Bheemachar for an offence under Section 294 A, Indian Penal Code. The District Superintendent of Police, Bangalore, is directed to take necessary further action in the matter.

For General Secretary to Government.

To

The District Magistrate, Bangalore.
The Registrar of Joint Stock Companies in Mysore.
The Inspector General of Police in Mysore.

G. R. S. App. F VI—G 2]

SUBJECT .....

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Diary. No of letter replied to .....

Section Law

File No. 194-34

Serial No. 2

General and Revenue Secretariat

( )

the 19

Proceedings of the Government of His Highness the Maharaja of Mysore.

Date of issue 28/5/ 1935.

Signed by M. H. Ramaswamy

21. N. R. I.

Read—

Correspondence ending with the ~~offce~~ letter no. J1. 1541/34-35 d 15.5.35 from the Dr. Mysore B'lore soliciting in the Circumstances pointed out Sanction of Govt to prosecute one Mr. N. Bheemacha of Sri Vittala ramaswamy Agency und. ~~Order thereon. No.~~ sec 294 A. I. P. C. having for ~~published~~ ~~translated~~ proposa relating to ~~The Scheme~~ Bonus ~~Scheme~~ Scheme of the Travancore Alliance Bank order: No P 6485-87 under sec 196 Cr. P. Code, Sanction is accorded to prosecute Mr. N. Bheemacha offence under sec 294 A. I. P. C. ~~the~~

May this be—

(i) printed ?

(ii) treated as a standing order ?

(iii) published in the Gazette, English Part ?

(iv) translated ?

(v) placed at the disposal of the press ?

(vi) published in the Gazette, Kannada Part ?

1)
The District Supt of Police Bangalore
is directed to take necessary ~~act~~
City ~~authorised to proceed~~
further action in the matter
~~Complaint before the City Magte~~